IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CRIMINAL JURISDICTION

CRIMINAL WRIT PETITION NO. 1362 OF 2005

Shri. Sayyed Akbar Ali @
Jugnu Sayyed Hasim Ali,
Age 26 years,
R. No. 77, Anwar Chawl,
Kuttiwadi, Dharavi, Mumbai-17.
(The Petitioner is at present
detained at Nasik Road Central
Prison at Nasik. .....Petitioner.

Versus

1) Shri. A. N. Roy,
Commissisoner of Police,
Brihan Mumbai.
2) The State of Maharashtra
(through the Secretary,
Home Department, Mantralaya,
Mumbai-32.
3. The Superibntendent,
Nasik Road Central Prison,
Nasik. .. .. Respondents

SHri. U. N. Tripathi, Advocate, for the Petitioner.
Shri. D. S. Mhaispurkar, A. P. P., for the Respondent-State.

CORAM : S. B. MHASE AND
S. R. SATHE, JJ.

DATE : SEPTEMBER 19,2005

ORAL JUDMGMENT (PER S.B.MHASE,J.)

. This criminal writ petition under Article 226 of the Constitution of India challenges the order of detention bearing No.30/PCB/DP/Zone-V/2005 dated 25.2.2005 issued under subsection (1) of section 3 of the Maharashtra Prevention of Dangerous Activities of

Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 by the Commissioner of Police, Brihan Mumbai and thereb y, inter alia, claiming the writ of habeas corpus.

2. In the petition, there are several grounds raised, but at the time of arguments, only ground (E) is pressed. Ground (E) is as follows :

> "The petitioner says and submits that the order of detention come to be issued on 25.2.2005 while the detenu was already in Judicial Custody in C.R.No. 165/04 having not been granted bail by the Court, thereby the detenu was already prevented from acting in any manner prejudicial to the maintenance of Public Order. It is therefore highly unjustified and unwarranted to clamp preventive detention law on a person who is already in custody and whose release on bail in near future is not imminent. This shows total non-application of mind of the detaining authority. The petitioner says and submits that considering the role played and the manner in which crime is committed no Court of law will normally grant bail to the detenu under normal law of the land. The detenu has never applied for bail because he was sure and there are very many evidences against him that he will never be granted bail. The detenu is in custody in C.R. No. 165/04 since 16.11.2004 till the detention order is issued. The petitioner says and submits that the detaining authority has not applied his mind to the facts of the case and mechanically passed the order. The petitioner says

and submits that there are no malarial before the detaining authority to come to the conclusion, atleast looking to the role played by the detenu the only accused that there is imminent possibly of release on bail in near future. This shows total non-application of mind of the detaining authority. The order of detention is illegal and bad in law on this count alone, and liable to be quashed and set aside."

3. The detaining authority has replied the said ground in paragraph No. 12 of his affidavit which is as follows:

" With reference to 7(E) of the petition, it is denied that since at the time of issuance of the Order of Detention on 25.2.2005, the detenu was in judicial custody in C.R. No. 165 of 2004 registered at Shahunagar Police Station, hence, he was already prevented from acting in any manner prejudicial to the maintenance of Public Order so as to render clamping of the Order of Detention unjustified and unwarranted. It is denied that the same discloses non-application of mind on my part. It is denied that considering the role played by the detenu and manner of commission of crime, no Court of law would have normally granted bail to the detenu under the normal law of land. It is denied that since the detenu never applied for bail and considering the evidence against him there was no possibility of his getting release on bail. It is denied that since the dnetenu was already in custody from 16.11.2004 till the issuance of the Order of Detention I have failed to apply my mind and passed the Order of Detention mechanically. It is denied

that there was no material before me so as to come to the conclusion atleast looking to the role played by the detenu that there was no imminent possibility of his getting released on bail in near future, it is denied that the same discloses non-application of mind on my part.

I state that on the basis of the material placed before me I was aware that the detenu was arraigned as an accused in respect of C.R. No. 165 of 2004 on a serious charge of a murder. I state that I was aware that there were eye-witnesses to the incident and also there was a recovery of blood stains weapon and clothes at the instance of the detenu. I was also aware that the detenu had not applied for bail. I was aware in respect of the said incident, the investigation was complete and the charge-sheet was filed on 7.2.2005 and the case was committed to the Court of Sessions. I state that the incident occurred at 9-40 p.m. and the complainant who was eye witness and knowing the deceased lodged the F.I.R. at 11.15 p.m. I state that I was aware that immediately after the incident, the detenu could not be arrested and it is only on 16.11.2004 he surrendered before the Magistrate and thereafter he was taken into custody in respect of the present CR. I state that in view of this I came to the conclusion that the detenu may get bail under the normal law of the land. I state that there was no impediment for the detenu applying for bail as the investigation was complete and the charge sheet was filed. I state that I was aware that many a times the accused used to apply for temporary bail on medical grounds of himself or any of his family members or for any other reasons and such a requests are often considered by the Court sympathetically.

I state that looking at the conduct of the detenu having successfully avoiding the arrest and later surrendering the magistrate and getting remanded to the Magisterial Custody, I was satisfied that the detenu would get bail under the normal laws and would revert back to the similar prejudicial activities. I state that based on this cogent material, I had issued the Order of Detention even though the detenu was in custody after arriving at a subjective satisfaction that the detenu may get bail under the normal law of the land and revert back to the prejudicial activities. "

. Learned Counsel for the petitioner submitted, relying upon the ratio laid down in the ruling in the case of Dharmendra Suganchand Chelawat v. Union of India, A.I.R. 1990 S. C. 1196, that detention order can validly be passed against a person in custody and for that purpose it is necessary that the grounds of detention must show that (i) the detaining authority was aware of the fact that the detenu is already in detention; and (ii) there were compelling reasons justifying such detention despite the fact that the detenu is already in detention. The expression " compelling reasons" in the context of making an order for detention of a person already in custody implies that there must be cogent material before the detaining authority on the basis of which it may be satisfied that (a) the detenu is likely to be released from

custody in the near future and (b) taking into account the nature of the antecedent activities of the detenu, it is likely that after his release from custody, he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities. Shri Tripathi submitted that out of the above referred ingredients which have been pointed out from the ruling in the case (supra), the ingredients, namely, that there must be cogent material before the detaining authority on the basis of which it may be satisfied that the detenu is likely to be released from the custody in the near future is not satisfied in the present case and, therefore, the order stands vitiated. We do not find any substance and merit in the said contention.

4. We have noticed in the sub-paragraph of paragraph (12) wherein the detaining authority has stated that the detenu was arraigned as an accused in respect of C.R.No. 165 of 2004 on a serious charge of a murder and that there were eye-witnesses to the incident and that there was recovery of bloodstained weapon and clothes at the instance of the detenu. The detaining authority has further stated that the detenu had not applied for bail. Investigation of the crime is

complete and the charge-sheet had been filed. The detaining authority has further shown awareness that immediately after the incident, the detenu could not be arrested and it is only on 16.11.2004 that he surrendered before the learned Magistrate and, therefore, he has been taken in custody in respect of the said C.R. The detaining authority thereafter has come to the conclusion that the detenu may get bail under the normal law of the land. According to us in the facts sand circumstances of the present case, it satisfies the test laid down in the Dharmendra Suganchand Chelawat (supra). Cogent material has been pointed out which, according to the detaining authority, is sufficient for the grant of bail. It is to be noted that the detaining authority is not supposed to carry out judicial process of grant of bail. It is an administrative action, and while exercising the said action, the satisfaction shall be based on cogent material. In the facts and circumstances of present the case, the detaianing authority has pointed out that eventhough the offence is serious since the detenu was not arrested for a pretty long period and he has surrendered before the learned Magistrate, this is a cogent material which may be considered for the grant of bail which shows the application of mind and thereby the detaining authority

is subjectively satisfied that the petitioner-detenu is likely to be released from the custody in the near future. We find that the technical exercise as demonstrated by the Hon'ble Supreme Court has been carried out by the detaining authority properly. There is no merit in the petition. Except this, no other ground was argued before us.

5. Therefore, the criminal writ petition is dismissed and the rule is discharged.

(S. R. SATHE, J.) **(S. B. MHASE, J.)**

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